

Office of the Attorney General  
State of LOUISIANA

Opinion No. 81-1184  
November 2, 1981

9 CIVIL SERVICE COMMISSION

90-A POLITICAL SUBDIVISIONS--Officers, Agents & Employees

'Seniority' for purposes of advancement, means continuous total departmental service from date of initial confirmation in department and not from date of last confirmation in a class. R.S. 33:2473(20); R.S. 33:2494(C); Art. X s 17 LA. Const. of 1974

Mr. B. Dexter Ryland  
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Dear Mr. Ryland:

In your letter of October 9, 1981, you have requested an opinion of this office relative to the interpretation of R.S. 33:2473(20), which defines 'seniority' for the purposes of municipal fire and police civil service.

R.S. 33:2473(20) provides as follows:

"Seniority' means the total employment computed for an employee beginning with the last date on which he was regularly and permanently appointed and has worked continuously to and including the date of computation. Time during which an employee has served in the armed forces of the United States subsequent to May 1, 1940, shall be construed to mean continuous service and shall be included in the computation of his seniority. Total seniority in the departmental service, including positions of any and all classes, or seniority in any one or more given classes, may be computed for an employee, but in either case employment shall be continuous and unbroken by a resignation or discharge of the respective employee. An employee who is finally discharged or resigns from his position shall forfeit all accumulated seniority. An employee who is suspended and returns to his position immediately following the expiration of his suspension shall not forfeit his seniority accumulated to the date of his suspension, but he shall not be given credit for the lost time at any future computation.' (Emphasis supplied)

Prior opinions of this office have examined this provision, and Article XIV Section 15.1, 3(T), which is identical to Section 2473(20). The constitutional

provision was continued as a statute under Article X, Section 17 of the 1974 Constitution.

In an opinion dated March 18, 1955, written by Mr. Carroll Buck, Second Assistant Attorney General, to Mr. Ed Trickett, the question was whether a person's seniority is computed from the date of first employment with a fire or police department or within a class, or whether the computation ensues with the employee's initial confirmation in such class. That opinion concluded that the seniority is calculated from the date of the employee's confirmation, after completion of the working test period, whether for achieving permanent status upon the initial employment or upon a subsequent appointment by promotion to a higher class, and that initial employment in the department or within a class was not used as the measure of seniority.

Again, on January 21, 1966, Mr. Carroll Buck concluded that seniority may only commence upon completion of the working test, i.e. upon confirmation.

In Opinion 77-988, this office concluded that 'seniority' means total employment computed for the employee beginning with the last date of permanent appointment, meaning confirmation. The question presented dealt with whether confirmation was permissible at varying stages during the probationary period, e.g. six, eight, ten or twelve months. It appears that the writer concluded that seniority is computed from the last date upon which the employee was confirmed as a regular and permanent employee successfully completing the working test consistent with the earlier opinions.

Opinion Number 77-1301 concluded that seniority automatically commences, in absence of express confirmation, at the conclusion of the working test period, not to exceed one year.

Opinion Number 79-980-A relied upon Opinion Number 77-1301 and concluded that seniority is computed from the date of confirmation; not the date of initial employment. Thus, our examination of these prior opinions discloses that the issue presented by you was not directly addressed by the earlier conclusions.

The question here is whether 'departmental seniority' is calculated in reckoning from the employee's confirmation in the entrance class or from the date of confirmation in a subsequent position or class.

As we read R.S. 33:2473(20), there appears to be two distinct types of seniority for municipal fire and police civil service employees.

First, 'seniority' is computed from the last date of permanent appointment. Thus, where an employee has been permanently employed, i.e. confirmed in several successive classes, his in-grade seniority is computed from the most recent confirmation in the particular position he holds at the time of the computation (provided his service in that class has been uninterrupted).

On the other hand, 'total seniority' is computed by combining continuous service of an employee in the various successive classes in the department.

There is no specific definition of 'seniority in the departmental service', although this term is used in R.S. 33:2494(C) in connection with filling

vacancies from a promotional list in a department; however, Section 2473 says that such seniority ' . . . may be computed . . . '. Section 2494(C) provides as follows:

'In the event a vacancy cannot be filled by reinstatement, or by reemployment as above provided, the board shall next certify the names of the persons upon the promotional list, in the order in which they appear thereon, for the class in which the vacancy is to be filled. The appointing authority shall select and appoint to the first vacancy to be filled the one person certified to him who has the greatest seniority in the departmental service. Any remaining positions to be filled in the same class shall be filled by appointing to each such successive vacancy the one of the remaining persons certified therefor who has the next highest seniority in the departmental service. If any one or more persons so certified should refuse the appointment, the appointing authority shall then select and appoint one of the persons certified by the board with the next highest seniority in the departmental service. This procedure shall be followed until the position has been filled by appointment of the one person who has the greatest seniority in the departmental service, and who is willing to accept the appointment, or until each person whose name appears upon the list, has in this order been certified and offered the appointment for the vacancy.'

Quite clearly, Section 2494(C) provides that the order or ranking of candidates on the promotional employment list is established by ranking candidates according to greatest seniority in the departmental service. This means that if a vacancy exists in the class of major, for example, that the candidates in the class below who are eligible for promotion shall be ranked in order of departmental service. Thus, if one candidate, 'Candidate A', was initially confirmed in the department prior to 'Candidate B', although 'B' was confirmed in grade prior to 'A', 'A' has the ' . . . highest seniority in the departmental service . . . ', and thus, 'A' would rank higher than 'B' in regard to consideration for promotion under R.S. 33:2494(C). (Compare: R.S. 33:2454(C))

We have been informed by the Office of the State Examiner that the contemporaneous practice has been consistent with our above views for at least twenty years. We enclose a copy of an opinion dated April 29, 1955, which discusses a matter similar to the issues discussed herein.

In view of the above, it is the opinion of this office that 'seniority', for the purposes of promotional advancement under Section 2494(C), in the municipal fire and police civil service means continuous total departmental service from the date of initial confirmation in the department and not from the date of last confirmation in a class.

We find no vagueness in the definitions of 'seniority' or computation of 'total seniority', but assuming that there is vagueness in these definitions, we believe the contemporaneous practice of at least twenty years by making

promotions on the basis of total seniority rather than seniority in grade has achieved legal status by such administrative construction or application. (See *ESSO Standard Oil Company v. Crescent River Port Pilots Association* (S.Ct. 1958) 235 LA. 937, 106 So.2d 316).

Very truly yours,

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Attorney General

BY: Kenneth C. DeJean  
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La. Atty. Gen. Op. No. 81-1184, 1981 WL 155036 (La.A.G.)  
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